IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2946 OF 2006

Mr. Santosh Ajinath Phulaware ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. J.B. Kocheta, for the Applicant.
Mr. U.V. Nikam, A.P.P. for the State.

CORAM : A.S. OKA, J.
DATE : 04th SEPTEMBER, 2006.

P.C. :

1. Heard Advocates appearing for the parties. The challenge in this Application under Section 482 of the Code of Criminal Procedure,1973 is to the order dated 15th November 2005 by which bail granted in favour of the Applicant under Section 167(2) of the said Act of 1973 was cancelled.

2. The learned Advocate appearing for the Applicant placed reliance on the decision of the Apex Court in the case of Aslam B. Desai v/s. State of Maharashtra reported in (1992) 4 Supreme Court cases 372. He submitted that even if bail is granted under Section 167(2) of the said Code, for cancellation of the said Bail, the prosecution has to establish the existence of grounds under Section 439(2) of the Code. He submitted that bail could not have been cancelled on merits as bail granted under Section 167(2) is on par with a regular bail under Section 437 and/or 439 of the said Code. He

submitted that only on the basis of N.C. recorded at the instance of the widow of the victim the bail could not have been cancelled. The learned APP supported impugned order.

3. I have considered the submissions. It is true that filing of charge-sheet containing material against the Applicant may not be the only ground for cancellation of the bail granted under Section 167(2) of the said Code. However, the learned Sessions Judge has noted that the widow of the deceased who has been allegedly murdered by the Applicant filed a complaint on 9th August 2005 stating that the Applicant was threatening her by visiting her shop premises. On the basis of the said complaint filed by the widow, the learned Additional Sessions Judge has cancelled the bail on the ground that the Applicant has misused the liberty granted to him and has tried to threaten the prosecution witness. On this ground, the order impugned deserves to be confirmed.

4. Accordingly, Application is rejected.

JUDGE